

180451 SA

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

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MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
ELIZABETH ZECK\*  
RANDOLPH R. LOWELL  
K. CHAD BURGESS  
NOAH M. HICKS II\*\*  
M. McMULLEN TAYLOR  
BENJAMIN P. MUSTIAN

AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

June 22, 2006

\*ALSO ADMITTED IN TX  
\*\*ALSO ADMITTED IN VA

**VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

FILED  
JUL 2 8 2006  
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DOCKETING DEPT.

RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service; Docket No. 2006-107-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and five (5) copies of Reply to NGU's Response to Applicant's Motion to Dismiss Petition to Intervene in the above-referenced matter. By copy of this letter, I am serving a copy of same on counsel for the Office of Regulatory Staff as well as the Intervenors subject to pending motions to dismiss or limit their intervention and enclose a certificate of service to that effect.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via our courier delivering the same. If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**

  
Benjamin P. Mustian

BPM/twb

Enclosures

cc: Shannon B. Hudson, Esquire  
Nanette S. Edwards, Esquire  
Duke K. McCall, Jr., Esquire  
Jacqueline H. Patterson, Esquire  
Mr. Newton Horr

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2006-107-WS**

IN RE:

Application of United Utility Companies,  
Inc. for adjustment of rates and charges  
and modifications to certain terms  
and conditions for the provision of  
water and sewer service.

**CERTIFICATE OF SERVICE**


This is to certify that I have caused to be served this day one (1) copy of the Reply to NGU's Response to Applicant's Motion to Dismiss Petition to Intervene by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Shannon B. Hudson, Esquire  
Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

Duke K. McCall, Jr., Esquire  
**Leatherwood Walker, Todd & Mann, PC**  
Post Office Box 87  
Greenville, South Carolina 29602

Jacqueline H. Patterson, Esquire  
**Patterson & Coker, PA**  
1225 South Church Street  
Greenville, South Carolina 29605

Mr. Newton Horr  
131 Greybridge Road  
Pelzer, South Carolina 29669

  
Tracy W. Barnes

Columbia, South Carolina  
This 22<sup>nd</sup> day of June, 2006.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2006-107-W/S**

IN RE:

Application of United Utility Companies,  
Inc. for adjustment of rates and charges  
and modifications to certain terms  
and conditions for the provision of  
water and sewer service.

**REPLY TO NGU'S RESPONSE TO  
APPLICANT'S MOTION TO DISMISS  
PETITION TO INTERVENE**

Applicant, United Utility Companies, Inc. ("Applicant" or "UUC"), submits the within reply to the June 15, 2006, Response ("Response") of North Greenville University ("NGU") to Applicant's motion to dismiss a portion of NGU's Petition to Intervene and to limit the scope of intervention ("Petition"). In that regard, the Applicant would respectfully show as follows:

**I. NGU'S INCONSISTENT ARGUMENTS**

Similar to NGU's Petition to Intervene, the arguments asserted in the response are contradictory. For example, in its Petition, NGU states that UUC's application for an adjustment in rates "violate the intent and spirit of the agreement between the Petitioner and United Utility..." [NGU Petition at 3, ¶ 9.] Paradoxically, NGU attaches as an exhibit to its Petition a copy of the July 9, 2001, contract which clearly and directly provides that UUC will charge for wastewater services "in accordance with Utility's rates, rules and regulations and conditions of service **from time to time on file with the Commission and then in effect.**" [NGU Petition, Exhibit A, at 5, ¶ 7(a), Emphasis supplied.] In its Response, NGU argues that UUC "seeks to cloud the relationship between UUC and NGU so that the understanding which leads to the current opposition of NGU to the current rate increase cannot be understood," but goes on to

state that “NGU is not seeking to litigate its contract with UUC in this forum, but to use that contract as a basis for establishing the relationship between the parties...” [NGU Response at 1-2.] NGU also states that it “seeks to call the attention of the Commission to the initial agreement and understanding of the parties as a foundation for the Commission to understand the absurdity of the rate increases sought by [UUC]” and not that UUC has “bound itself to contractual rates with NGU.” [NGU Response at 2-3.] It is difficult to discern the logic of alleging that UUC has violated the intent of the agreement while at the same time asserting that the contract has not been plead for that purpose.

NGU makes further dichotomous assertions in its Response. While advancing the idea that it is raising these issues merely for the Commission’s information, other portions of the Response appear to purposefully leave the door open to the Commission rehearing the contractual dispute. For example, NGU refers to rates UUC “**agreed to** when NGU ‘gave’ UUC the waste water treatment plant” and asserts that “UUC betrayed its agreement with NGU.” [Id. Emphasis supplied.] Later, NGU states a position as to its purported contractual rights which conflicts with the foregoing – at times arguing that UUC agreed to a contractual rate in perpetuity and at others that UUC “**agreed not to raise rates in the immediate future.**” [NGU Response at 2. Emphasis supplied.] It is illogical for NGU to claim on one hand that it is not asserting issues based upon the meaning of the contract but on the other hand, allege that UUC did not abide by the agreement. Such inconsistencies should be taken as an effort to only mask the true purpose of NGU’s intervention in this matter which is the relitigation of the issue regarding the rates contemplated by the contract.

## II. UNSUBSTANTIATED ARGUMENTS/FAILURE TO CITE AUTHORITY

Even though NGU purports to have abandoned its contractual assertions as noted above, NGU continues to aver that the 2001 contract contemplated an agreement for rates other than those approved by the Commission; therefore, UUC is compelled to further respond.

By filing its response to UUC's Motion to Dismiss, NGU now has had four opportunities to present facts supporting the contention that UUC agreed to such an arrangement.<sup>1</sup> Nonetheless, NGU has failed to provide any evidence by affidavit to refute the filed affidavit of UUC's employee regarding this matter. Additionally, UUC submitted a letter from the president of NGU wherein he plainly, directly and unequivocally admits NGU was aware of the 2000 application for an increase in its rates – a letter that was filed with the Commission in that docket **after** UUC and NGU had entered into the contract to transfer the plant.

Moreover, UUC has cited the Commission's previous Order addressing the issue raised by NGU's petition. NGU states in its Response that "none of the issues raised by [NGU] have been addressed by the [Commission] nor have they been addressed elsewhere." [NGU Response at 1.] While, as NGU points out, this Order did address the direct issue of whether NGU could intervene out of time, the Commission further explicitly held that there is "no evidence to support [NGU's] contention" that it is contractually entitled to a rate different than those on file with the Commission and in effect, from time to time. [Order No. 2004-253 at 6.] NGU did not respond or make any filings in opposition to UUC's motion which was granted in Order No. 2004-253 and, more importantly, did not submit any evidence supporting its argument regarding entitlement to a rate different than that tariffed. The only logical conclusion is that the Commission made this decision based upon undisputed facts. NGU should not be able to now

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<sup>1</sup> These opportunities arose when (a) UUC filed its application in Docket No. 2000-210-WS of which NGU had actual notice, (b) when NGU sought to intervene in circuit court C/A No. 02-CP-40-5494, (c) when NGU sought to intervene in Docket No. 2000-210-WS, and (d) when NGU filed its Response in the instant Docket.

take a second bite at the apple. In the current action, NGU continues to make unsubstantiated arguments as to the rates to which the parties contractually agreed. It has submitted no evidence of an understanding otherwise, yet appears to believe if it continues to make such unproven statements, the Commission will eventually relent – the Commission should not.

More importantly, NGU has not provided any legal authority contradicting UUC's assertion that the principles of *res judicata* prevent NGU from interposing its arguments yet again or that UUC's Motion to Dismiss based upon NGU's failure to state facts sufficient in its Petition is not appropriate. The Commission has already finally determined that NGU is not contractually entitled to a rate different than that approved by the Commission and the principles of judicial economy do not warrant rehashing NGU's incessant contentions otherwise. UUC is not "fearful" of addressing these issues as NGU asserts [Response at 3]. Rather, UUC has already addressed these issues and the Commission has determined the adversely to NGU. To relitigate an already settled issue is improper under *res judicata* in addition to being an unproductive use of resources.

#### **IV. CONCLUSION**

For the foregoing reasons, Applicant respectfully request that the Commission grant its Motion dismissing NGU's Petition to Intervene to the extent that it claims that NGU is contractually entitled to a rate other than Commission approved rates on the grounds that such claims are barred by the doctrine of *res judicata* or, alternatively, that such assertions are so defectively stated that they fail to give rise to a claim pursuant to SCRCP 12(c). UUC also requests that the Commission grant UUC's motion to preclude NGU from attempting to introduce evidence into the record of this case in furtherance of its effort to relitigate this issue and limit the scope of NGU's intervention to like extent.

[SIGNATURE ON FOLLOWING PAGE]



John M.S. Hoefer

Benjamin P. Mustian

**WILLOUGHBY & HOEFER, PA**

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Applicant

Columbia, South Carolina

This 22nd day of June, 2006